

Readopt with amendment Pas 200, effective August 22, 1996 (Doc. #6320) to read as follows:

CHAPTER Pas 200 PASSENGER TRAMWAY SAFETY BOARD HEARING AND PROCEDURAL RULES

PART Pas 201 ADJUDICATIVE HEARINGS - PREHEARING PROCEDURES

Pas 201.01 Computation of Time.

- (a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.
- (b) Computation of any period of time referred to in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.
- (c) If the last day of the period so computed falls on a Saturday, Sunday or state legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or state legal holiday.

Pas 201.02 Request for Hearing.

- (a) An operator who is aggrieved by an order issued by the board or the commissioner, except for an emergency shut down order, may request a hearing within 10 days of the service of the order.

- (b) Requests for hearing shall be sent to:

The [p]Passenger [t]Tramway [s]Safety [b]Board[,]
 c/o [d]Department of [s]Safety[,]
 [d]Division of [s]Safety [s]Services[,]
 31 Dock Road[,]
 Gilford, New Hampshire, 0324[6.]9-7627

- (c) Requests for hearing shall include the following:

- (1) Name of operator; and
- (2) Date of service of order to operator.

Pas 201.03 Service.

- (a) Applications and petitions for declaratory rulings shall be filed with the board.
- (b) All objections, motions, replies, exhibits, memoranda, or other documents filed in connection with a request for board action shall be served by the proponent upon the board and all other parties to the proceeding by:
 - (1) Depositing a copy of the document in the United States mail, first class postage prepaid, addressed to the last address given to the board by the party being served, no later than the day the document is filed with the board; or
 - (2) Delivering a copy of the document in hand on or before the date it is filed with the board.

(c) Notices, orders, decisions or other documents issued by the board in connection with a request for board actions shall be served by the board upon all parties to the proceeding by either:

(1) Depositing a copy of the document, first class postage prepaid, in the United States mail, addressed to the last address given to the board by the party being served; or

(2) Delivering a copy of the document in hand to the party.

(d) When a party has appeared by a representative, delivery of a document to the party's representative at the address stated on the appearance filed by the representative shall constitute delivery to the party.

(e) Except for exhibits distributed at a prehearing conference or hearing, every document filed with the board, and required to be served upon the parties to an adjudicative proceeding, shall be accompanied by a certificate of service, signed by the person making service, attesting to the method and date of service, and the persons served.

Pas 201.0[2]4 Notice of Hearing.

(a) The board shall schedule the date, time and place of the hearing. The date shall be scheduled at the earliest mutually convenient date.

(b) The notice shall:

(1) Comply with RSA 541-A:31, III;

(2) Include information regarding continuances pursuant to Pas 202.01(a);

(3) Be in writing and delivered to the operator by mail or in hand.

Pas 201.05 Prehearing Conferences.

(a) At any time following the commencement of an adjudicative proceeding, the board, upon motion, or its own initiative, shall request the parties to attend one or more prehearing conferences when such a conference would aid in the disposition of the proceeding.

(b) Matters which can be addressed at a prehearing conference shall include:

(1) The distribution of exhibits and written testimony, if any, to the parties;

(2) Opportunities and procedures for simplification of the issues;

(3) Possible amendments to the pleadings;

(4) Opportunities and procedures for settlement;

(5) Possible admissions of fact and authentication of documents to avoid unnecessary proof;

(6) Possible limitations on the number of witnesses, and possible limitations on the scheduling of witnesses;

(7) Possible changes to the standard procedures which would otherwise govern the proceeding; and

(8) Other matters which might contribute to the orderly, prompt, and fair resolution of the proceeding.

(c) The board shall cause all prehearing conferences to be recorded excluding settlement discussions. Matters decided at a prehearing conference shall be reflected in an appropriate order.

Pas 201.06 Waiver of Procedural Rules. The board, upon the accepted motion of any interested person, shall waive any procedural requirement or limitation imposed by this chapter upon reasonable notice to affected persons when it appears that the proposed waiver or suspension is lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues properly pending before the board than would adherence to particular procedural rules or requirements. A motion for waiver or suspension of a procedural rule or order shall fully set forth the reasons for the requested relief.

Pas 201.07 Conflict of Interest.

(a) Board members shall not participate in any case or proceeding before the board in which they have real or potential conflicts of interest. A conflict of interest occurs when a member has a personal involvement with the case, action, party or with the same issues being adjudicated. In the case of a question of conflict arising from the involvement by a member in the same issue being adjudicated, it shall involve more than an intellectual interest in the issue to require withdrawal of a member. No conflict shall exist if the board member possesses no more than an intellectual interest in the issue. A conflict shall be a direct personal, monetary or professional interest in the outcome of the decision on that issue.

(b) Conflicts of interest may be raised by:

(1) A board member who perceives that he/she has a conflict;

(2) The board, upon its own motion; or

(3) Any party to a case before the board at any time during a proceeding. However, if a party knows facts constituting a conflict prior to a hearing, the party shall raise the issue by written motion prior to the date of hearing at the first opportunity after discovery.

(c) In the event the issue of a conflict is raised, the member shall have the opportunity to disqualify himself or herself from the hearing. If the member declines because the member does not believe there is a conflict of interest, and if the board or a party before the board disagrees with that decision by the member, the matter shall be considered by the remaining members hearing the case. A majority of those remaining members shall determine whether the member shall be allowed to participate.

(d) No board member shall appear as an advocate before the board or sit on any case in which his law or labor relations firm, or an organization in which he is a member, is a party or represents a party.

(e) Nothing in this section shall prohibit a board member from being a witness before the board in a case in which that board member has actual knowledge of relevant facts. However, if a board member shall act as such a witness, that board member shall not participate in deliberations as to the outcome of the matter being heard.

PART Pas 202 ADJUDICATIVE HEARINGS - HEARING PROCEDURES AND RULES

Pas 202.01 [Hearing Procedures.

(a) The following hearing rules of the department of safety (1996) shall apply to all hearings concerning orders of the board:

- (1) Saf-C 202.07, continuances;
 - (2) Saf-C 202.10, representation of parties;
 - (3) Saf-C 202.11, public access;
 - (4) Saf-C 202.18, motions; and
 - (5) Saf-C 202.24, official notice.
- (b) The following shall amend the rules listed in (a) above:
- (1) The term "board" shall replace the term "department";
 - (2) The term "board" shall replace the term "hearings examiner".]

Requests for Continuances.

(a) A request for continuance of a hearing shall be made in writing and received by the board, absent exigent circumstances, at least 5 working days prior to the hearing.

(b) Exigent circumstances shall include:

- (1) Serious illness;
- (2) Hospitalization;
- (3) Incarceration;
- (4) Death of a family member; or
- (5) Any other unforeseeable circumstance beyond the party's control that requires the party's absence from the scheduled hearing.

(c) Appearance by a representative of a party shall not waive the party's required presence at a hearing.

(d) The written request or motion shall contain but not be limited to:

- (1) The specific reason(s) for the request including issue(s) to be resolved and conflicts with scheduled court appearances;
- (2) Optional dates and times when all interested parties shall be available;
- (3) The identity of the requestor; and
- (4) The name of the respondent.

Pas 202.02 Representation of Parties.

(a) Parties may appear pro se or be represented by an attorney or as specified by RSA 311:1.

(b) Parties or their representatives may cross-examine witnesses and present evidence and witnesses on their own behalf.

(c) In the event a representative or party appears to be unable to ask pertinent questions regarding the issue(s) for which the hearing is being held, the board shall conduct and complete such questioning to obtain all necessary information for the board to make a fair and informed decision.

(d) Appearance by a representative of a party shall not waive the party's required presence at a hearing.

Pas 202.03 Intervention.

(a) A petitioner shall state with particularity in his or her petition for intervention the following:

(1) The petitioner's interest in the subject matter of the hearing;

(2) The petitioner's position with respect to the subject matter of the hearing;

(3) Why the interests of the parties and the orderly and prompt conduct of the proceeding would not be impaired; and

(4) Any other reasons why the petitioner should be permitted to intervene.

(b) Petitions for intervention shall be granted any time during the proceeding if the petitioner has a substantial interest in the proceeding granting the petition is in the interest of justice, and if granting intervention will not unduly delay the board's proceeding.

(c) Once granted leave to intervene, an intervenor shall take the proceeding as he or she finds it and no portion of the proceeding shall be repeated because of the fact of intervention.

Pas 202.04 Public Access.

(a) Except as otherwise provided by law, administrative hearings shall be open to the public.

(b) Members of the press shall be admitted to the hearings whenever the public is permitted. If the press is present at a hearing, the board shall brief them, off the record, in the presence of all parties, as to the nature and purpose of the hearing.

Pas 202.05 Motions.

(a) Motions shall be in written form unless orally presented at the hearing. Written motions shall be included in the record of the proceeding and filed together with the case file.

(b) All written motions submitted on the date of the hearing shall be excluded from consideration by the board.

(c) Notwithstanding (b) above, the board shall accept a written motion submitted on the day of the scheduled hearing if the moving party is able to show:

(1) The existence of newly discovered evidence which due diligence would not have discovered prior to the hearing; or

(2) Exigent circumstances, pursuant to Pas 202.01(b), existed that prevented the filing of the motion prior to the day of the hearing.

(d) If the board accepts the written motion on the day of the scheduled hearing and the opposing party requests time to respond, a continuance shall be granted. The continuance shall be attributed to the party submitting the motion.

(e) Oral motions shall be recorded in full in any transcript of the proceeding.

(f) Once all testimony has been heard and closing arguments, if any, have been completed, the hearing shall be closed and no motion(s) in any form shall be allowed unless expressly authorized by these rules.

Pas 202.06 Official Notice.

(a) The board shall take official notice pursuant to RSA 541-A:33, V.

(b) The board shall state on the record the matters of which he intends to take official notice, and afford the parties the opportunity to object.

Pas 202.0[2]7 Rules of Evidence. The following shall govern the introduction and admissibility of evidence:

(a) The rules of evidence shall not apply to passenger tramway safety board hearings;

(b) All relevant evidence shall be admissible. Such evidence shall include, but not be limited to depositions, affidavits, official documents and testimony of witnesses.

(c) Applicable statutory and constitutional privileges and immunities requiring exclusion of evidence in civil proceedings shall be recognized, provided that nothing herein shall prohibit a party from waiving his/her privilege and immunity.

Pas 202.08 Burden of Proof.

(a) The party asserting the affirmative of a proposition shall have the burden of proving the truth of that proposition by a preponderance of the evidence.

(b) Without limiting the generality of paragraph (a), above, all moving parties and all petitioners shall have the burden of persuading the board that their motion or petition should be granted.

Pas 202.0[3]9 Decision of the Board. Pursuant to RSA 2[5]25-A:20, the board shall:

(1) Present written findings to the commissioner;

(2) Make such order as the facts require.

Pas 202.10 Reopening of the Record.

(a) At any time prior to the issuance of the decision on the merits, the board, on its own motion or on the motion of any party, shall reopen the record to receive newly discovered, relevant, material and non-duplicative testimony or evidence not previously received and not previously available at the time of hearing if the presiding officer determines that such testimony and evidence are necessary to a full consideration of the issues which form the subject of the hearing.

(b) Requests to reopen the record made after one or more parties have left the hearing shall be made in writing and supplied to the board and to any parties to the proceeding by the requestor. The requirements of Pas 201.03 shall be met.

(c) The board shall give written notice of such further proceedings if the parties are no longer present. The board shall also specify a date by which other parties, if any, shall respond to or rebut the newly received evidence.

Pas 202.0[4]11 Appeals. All appeals shall be pursuant to RSA 225-A:21.

PART Pas 203 RULEMAKING [HEARINGS] PETITIONS

Pas 203.01 Petition.

(a) Petitions for rulemaking shall be in writing;

(b) The petitioner shall include a cover letter stating the reasons the rule is being proposed;

(c) The petitioner shall include his/her name, address and phone number;

(d) Petitions shall be sent to[the passenger tramway safety board, c/o department of safety, division of safety services, 31 Dock Road, Gilford, NH 03246-7626.]:

Passenger Tramway Safety Board
c/o Department of Safety
Division of Safety Services
31 Dock Road
Gilford, NH 03249-7627

[(e) The Board shall act on the petition pursuant to RSA 541-A:4.]

Pas 203.02 [Public Hearing]. All rulemaking hearings shall comply with RSA 541-A:11.] Disposition of Petitions for Rulemaking.

(a) The board shall request additional information from the petitioner or from others if such additional information is required to reach a decision.

(b) The board shall deny the petition for rulemaking when the adoption, amendment or repeal of such rule is contrary to public safety or public interest, such as but not limited to:

(1) A rule which is not within the rulemaking authority of the board;

(2) Duplication of a rule or a statutory provision;

(3) Inconsistency between the existing rules and the statutory mandate of the board; or

(4) Inconsistency of administrative rules one with another.

(c) Within 30 days of receipt of a sufficient petition, the board shall dispose of it by notifying the petitioner:

(1) That the petition is granted and beginning rulemaking proceedings as required by RSA 541-A:4; or

(2) In writing that the petition is denied and the reasons for its denial.

(d) The denial of a petition for rulemaking shall not entitle the petitioner to a hearing.

PART Pas 204 RULEMAKING HEARINGS

Pas 204.01 Scope. This part shall apply to rulemaking hearings required pursuant to RSA 541-A:11.

Pas 204.02 Notice. The board shall cause to be published in the New Hampshire Rulemaking Register a notice of its intent to hold a rulemaking hearing pursuant to RSA 541-A:6.

Pas 204.03 Presiding Officer.

(a) The hearing shall be presided over by the chairperson of the board or his or her designee.

(b) The chairperson or designee shall:

(1) Determine whether a quorum of the board is present for the hearing;

(2) Call the hearing to order;

(3) Cause a recording of the hearing to be made;

(4) Recognize those who wish to be heard;

(5) Maintain order during the hearing; and

(6) Adjourn the hearing.

Pas 204.04 Order of the Hearing.

(a) Any individual who wishes to testify at the hearing shall provide his or her full name on a speakers list furnished by the board.

(b) Individuals shall be called to testify in the order in which they signed up.

(c) Before adjourning the public hearing and after all individuals who signed up have been heard, the chairperson or designee shall call for any new testimony from any new speaker.

(d) When the chairperson or designee has determined that no other individual wishes to testify, he or she shall close the public hearing.

Pas 204.05 Postponement and Continuations.

- (a) The chairperson or designee shall postpone a hearing to a later date, time or place in the event of:
 - (1) Inclement weather;
 - (2) A lack of a quorum; or
 - (3) Determination by the board that postponement of the hearing shall facilitate greater participation by the public.
- (b) The chairperson or designee shall continue a hearing to a later date, time or place in the event that:
 - (1) The time allotted is not sufficient to give each individual who wishes to testify an opportunity to do so; or
 - (2) A lack of a quorum due to unavoidable absence.
- (c) Notice of a postponement or continuation of a public hearing or written comment period shall be provided pursuant to RSA 541-A:11, III.

Pas 204.06 Written Comments. Individuals may submit written comments to the board on proposed rulemaking actions any time from the time notice has been published until the end of the written comment period as set forth in the notice of rulemaking.

Pas 204.07 Transcripts or Copies of Tapes.

- (a) All hearings shall be tape recorded.
- (b) A copy of the tape may be requested by submitting a written request to:

Passenger Tramway Safety Board
Department of Safety
Division of Safety Service
31 Dock Road
Gilford, NH 03309-7627
- (c) Pursuant to RSA 91-A:4, persons requesting a copy of the tape recording shall pay the actual cost of duplication.
- (d) Recordings of proceedings shall be preserved for no less than 75 days from the conclusion of the hearing date.

PART Pas 205 REQUEST FOR STATEMENT EXPLAINING RULE

Pas 205.01 Request for Rule Explanation.

(a) Within 30 days after the adoption of a rule, any interested person may request the board to issue a statement explaining the following:

- (1) The principle reason(s) for and against the adoption of a rule in its final form; or
- (2) Reasons why the board overruled arguments and considerations relative to the rule.

(b) Rule explanation requests shall be received and disposed of in the following manner:

- (1) Requests shall be submitted to the board at:

Passenger Tramway Safety Board
Department of Safety
Division of Safety Service
31 Dock Road
Gilford, NH 03309-7627

- (2) When a request for rule explanation has been received by the board, the board shall issue a statement responsive to the request within 60 days. The statement shall provide the information required by (a) above.

PART Pas 20[4]6 DECLARATORY RULING

Pas 20[4]6.01 Submitting Request for Declaratory Ruling.

(a) Individuals petitioning for a declaratory ruling, as defined by RSA 541-A:1, V, shall submit the following information to the board in writing:

- (1) The specific statute, rule, or order whose applicability is being questioned;
- (2) The interest of the petitioner;
- (3) The activity in question; and
- (4) The name, address and phone number of the petitioner.

(b) Any petition which does not contain the information in (a) above shall be inadequate.

Pas 20[4]6.02 Time for Consideration. The board shall review the declaratory ruling petition at the meeting following receipt of the petition, unless the petition is received less than one week before the next scheduled meeting, in which case the board shall consider the petition at its next meeting.

Pas 20[4]6.03 Disposition of Petition.

(a) The board shall act on the petition as follows:

- (1) Issue a written declaratory ruling within 30 days of the meeting at which the petition was considered;
- (2) Reject the declaratory ruling petition if it is inadequate or beyond the scope of the board's authority as specified in RSA 225-A; or

(3) Refer the petition to the [Attorney General's office] department of justice when the board requires legal guidance. In such cases the board shall render a decision to the petition within 120 days of receiving [a response from the Attorney General's office] the petition.

PART Pas 207 RETENTION OF RECORDS

Pas 207.01 Record keeping.

(a) Unless otherwise specifically stated elsewhere in the law or rules, all records and documents received by the board shall be retained for a minimum of 5 years.

(b) Notwithstanding (a) above, the original approved designs package of a lift shall be retained for a minimum of 5 years after the last registration.